

**FILED**  
Clerk  
District Court

**APR 12 2007**

**For The Northern Mariana Islands**  
**By** \_\_\_\_\_  
**(Deputy Clerk)**

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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN MARIANA ISLANDS

**GUIHUA BAI,**

Plaintiff,

-vs-

**GINTIAN CORPORATION, dba "LIGHT  
MASSAGE, ZHONG LI and "Mr. ZHU":**

Defendants

CIVIL ACTION NO. **07 - 0016**

**VERIFIED COMPLAINT FOR  
VIOLATIONS OF FAIR LABOR  
STANDARDS ACT**

COMES NOW, Plaintiff, by and through his undersigned counsel, and in support of her complaint against the defendants for violations of the Fair Labor's Standards Act to recover unpaid wages, unpaid overtime compensation, liquidated damages, attorneys fees, and costs under the provision of Section 16(b) of the Fair labors standards Act of 1938, as amended (29 USCS § 216(b), hereinafter referred to as the "Act" and to recover such other damages as alleged herein for breach of contract to hereby alleges as follows:

JURISDICTION

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2  
3 1. This Court has jurisdiction over Plaintiff's FLSA claims under Section 216(b) of the Act  
4 (23 U.S.C. § 216(b)) and by the provisions of 28 U.S.C. §1331 (Federal Question Jurisdiction) and  
5  
6 28 U.S.C. §1337(a) (Proceedings arising under any act of Congress regulating commerce).

7  
8 2. The FLSA, at 29 U.S.C. §201 (*et seq.*), (hereinafter "the Act"), applies to this matter  
9 through the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political  
10 Union with the United States ("Covenant"), Article V, §502(a)(2).

11  
12 3. Venue is properly placed in this Court at all relevant time Plaintiff was an employee of  
13 Defendant who was doing business in Saipan, in the CNMI.  
14

PARTIES

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16  
17 4. Plaintiff, Guihua Bai, (hereinafter "Ms. Bai") is a citizen of the People's Republic of  
18 China, presently residing on Saipan, Commonwealth of the Northern Mariana Islands and was  
19 employed as a non-resident worker by the Defendant as a masseuse.  
20

21  
22 5. On information and belief, Defendant Gintian Corporation, dba "Light Massage," is a  
23 lawful corporation organized and existing under the laws of the Commonwealth of the Northern  
24 Mariana Islands, having its principal office and place of business on Saipan and at all times material  
25 hereto was the employer of Plaintiff as defined under Section 3(d) of the Act (29 U.S.C. § 203(d))  
26 of the Act.  
27  
28

1           6. Defendant "Mr. Zhu" is a citizen of the People's Republic of China presently residing on  
2 Saipan, Commonwealth of the Northern Mariana Islands. Mr. Zhu's full name is presently unknown  
3 to plaintiff and shall be referred to herein as "Zhu." Zhu acts as the general manager and operator  
4 of the business of "Light Massage" and on information and belief Zhu, along with Defendant Zhong  
5 Li are co-owners of the business.  
6

7  
8           7. Defendant Zhong Li, hereinafter "Li" or "defendant Li," is the President/Vice-President  
9 and Secretary and sole shareholder of Gintian Corporation.  
10

11           8. Gintian Corporation is the alter ego of defendants Zhu and Zhong Li.  
12

13           9. Alternatively, on information and belief defendants Zhu and/or Li were acting directly  
14 and/or indirectly as the employer of Ms. Bai pursuant to their own interests and in the interest of  
15 defendant Gintian Corp.  
16

17  
18           10. It is expressly alleged herein that defendant Gintian Corporation and Defendants Zhu and  
19 Li are jointly and severally liable for the claims raised herein as the true and actual employers of Ms.  
20 Bai and for purposes of this complaint, Defendants Gintian Corporation, Zhu and Li shall be jointly  
21 referred to herein as "Employer."  
22

23  
24           11. Employer was the employer of Ms. Bai as defined under 29 U.S.C. §203 of the Fair  
25 Labor Standards Act.  
26

27           12. At all times mentioned herein, Employer was engaged in the business of operating a  
28

1 massage parlor and was conducting business in commerce within the meaning of §3(b), 3(i), 3(j),  
2 6(a) and 7(a) of the Act (29 U.S.C. §§203(b), 203(i), 203(j), 206(a) and 207(a).  
3

4 13. In performing her duties as a masseuse as described herein, Ms. Bai was engaged in  
5 commerce in that Employer's businesses involved interstate commerce within the meaning of §3(b),  
6 3(i), 3(j), 6(a) and 7(a) of the Act (29 U.S.C. §§203(b), 203(i), 203(j), 206(a) and 207(a).  
7

8  
9 FACTUAL BACKGROUND  
10

11 14. During the period from September 2005 through the present, Employer employed Ms.  
12 Bai as masseuse in connection with the business known as "Light Massage" which was owned and  
13 operated by Employer.  
14

15 15. In about July of 2005, Ms. Bai contacted an "International Company" in Dalian, China  
16 which recruited workers for overseas positions.  
17

18 16. Ms. Bai paid the recruiter 20,000 RMB (US\$2,500) to find a job in Saipan and to prepare  
19 the necessary paperwork for her entry into Saipan and air transportation to Saipan.  
20

21 17. Ms. Bai studied physical therapy and Chinese medicine while in China and the recruiter  
22 advised Ms. Bai that they had found a position for her in Saipan.  
23

24 18. On or about August 15, 2005, Ms. Bai traveled to Saipan where she was met at the  
25 airport by defendant Zhu.  
26  
27  
28

1 19. Shortly after Ms. Bai's arrival on Saipan and before she was allowed to start work for the  
2 employer, Defendant Zhu provided Ms. Bai with a document which required her to pay to the  
3 Employer \$4,000 to be deducted from future wages for the costs of bringing her to Saipan and  
4 processing her employment papers. Because of her financial condition and unequal bargaining  
5 position, Ms. Bai agreed to the payment and executed the document. Ms. Bai was never provided  
6 with a copy of the document, but deductions were immediately taken from her wages.  
7  
8

9  
10 20. On information and belief, Ms. Bai was hired as a non-resident worker under the terms  
11 of an employment contract approved by the CNMI Department of Labor. Ms. Bai was never  
12 provided a copy of her employment contract.  
13

14 21. On information and belief, Ms. Bai was hired as an hourly employee to be paid the  
15 minimum hourly wage of \$3.05 per hour and guaranteed 40 hours a week of work..  
16

17 22. The Employer, however, did not pay an hourly wage as required under the law. Instead,  
18 Ms. Bai was paid a commission for any massages she performed pursuant to the schedule attached  
19 as Exhibit 1.  
20

21  
22 23. Under the commission schedule, Ms. Bai was to be paid \$5.00 for each massage she  
23 performed, or \$4.00 for a local massage. Pursuant to the schedule, if her commission from the  
24 massages totaled less than \$500 per month, the Employer would pay her an additional \$100 in wages  
25 or as a bonus. If the monthly commission was between \$501 and \$600 per month the employer  
26 would pay and additional \$150.00 per month in wages or as a bonus. As the commissions increased,  
27  
28

1 so did the bonus as per the schedule.  
2

3 24. During the entire period of employment, Plaintiff had performed all appropriate terms  
4 and conditions of her employment contract and has always been willing to continue to perform under  
5 the contract. Plaintiff performed her work and services for Employer diligently and without any  
6 complaint from Employer.  
7

8  
9 25. Except as alleged in Paragraph 26 immediately below, during the entire period of  
10 employment and up to the present, Ms Bai was made to work seven days a week from 4:00 PM until  
11 2:00 AM for a total of 10 hours a day or 70 hours per week.  
12

13  
14 26. Each third week throughout the entire period of employment, Ms. Bai was made to work  
15 from 11:00 AM until 2:00 AM for a total of 15 hours a day or 105 hours per week.  
16

17 27. Throughout the entire period of employment and up to the present, Ms. Bai has not been  
18 paid the minimum wages due under the contract and as required by law.  
19

20 28. Throughout the entire period of employment and up to the present, Ms. Bai has not been  
21 paid minimum wages and overtime due under the contract and as required by law.  
22

23 29. Throughout the entire period of employment and up to the present, Employer has made  
24 unlawful deductions from Ms. Bai's wages for her recruitment and hiring as alleged in ¶19 above,  
25 and costs of electricity, water, and taxes for wages not actually paid.  
26  
27  
28

COUNT I: VIOLATION OF THE FLSA

30. Plaintiff hereby realleges and incorporates paragraphs 1 through 29 of this Complaint as if more fully set forth herein.

31. Employer was the employer of the Plaintiffs as defined under 29 U.S.C. §203 of the Fairly Labor Standards Act.

32. Employer was required to pay the Plaintiffs an amount equal to one and one-half (1-1/2) of the base rate of pay for each hour worked in excess of forty (40) hours per week.

33. Employer failed to maintain and keep or provide adequate records of the hours worked in each workday and each workweek and the basis on which wages were paid.

34. Employer failed to pay minimum wage for actual hours worked for the first forty (40) hours worked in each work week in violation of the Fair Labor Standards Act.

35. Employer failed to pay overtime premiums for each hour worked in excess of forty (40) hours in violation of the Fair Labor Standards Act.

36. Throughout the entire period of employment and up until the present, Ms. Bai should have been paid a total of approximately TWENTY SIX THOUSAND FOUR HUNDRED TWENTY TWO DOLLARS and 64/100 (\$26,422.64), exclusive of tax and social security payments.

37. Throughout the entire period of employment and up until the present, Ms. Bai was paid

1 a total of only approximately FIVE THOUSAND FOUR HUNDRED TWENTY NINE and 60/100  
2 (\$5,429.60).

3  
4 38. Ms. Bai is entitled to judgment for all unpaid wages and overtime hours worked from  
5 the inception of her employment with Employer to the time of filing this complaint in the amount  
6 of TWENTY THOUSAND NINE NINETY THREE DOLLARS and 04/100 (20,993.04).

7  
8 39. Ms. Bai is entitled to judgment for all unpaid wages and overtime hours worked after  
9 the filing of this complaint which were not paid under the Fair Labor Standards Act in an amount  
10 to be proven at trial.

11  
12 40. Employer's failure to pay minimum wage and overtime pay as was required by law was  
13 not in good faith, and was willful, entitling the Plaintiff to an equal amount in liquidated damages.  
14

15  
16 COUNT II: CONSTRUCTIVE TERMINATION

17  
18 41. Plaintiff realleges and incorporates paragraphs 1 through 40 as if fully set forth herein.

19  
20 42. On information and belief Zhu learned of Ms. Bai's decision to file a suit to recover  
21 unpaid wages and overtime as well as for the unlawful deductions taken from her pay.

22  
23 43. On April 6, 2006, Zhu called a meeting of the employees of the Light Massage and  
24 advised them that any of the employees then working could voluntarily transfer to a new employer  
25 or could be repatriated back to China. Mr. Zhu also warned the employees not to make any trouble  
26 for the company.  
27  
28



1           44. On information and belief that meeting was called and the warning was issued because  
2           Zhu had learned of Bai's decision to bring suit against the employer.

3           45. As a result of the meeting, and the veiled threats of Mr. Zhu, Ms. Bai became extremely  
4           concerned for her personal safety and left the employer's barracks and decided not to return to work.  
5           The employer's actions in failing to pay wages and so advising the employees constituted a  
6           constructive termination without cause, and on information and belief in retaliation for Bai's  
7           decision to bring on her FLSA claims.  
8

9  
10           46. On information and belief, at the time of Ms. Bai's constructive termination there were  
11           twenty-one (21) work weeks remaining on the contract.  
12

13           47. Based upon the defendant's schedule and work hours prior to her termination, Ms Bai  
14           would have earned FOUR THOUSAND SIX HUNDRED AND TWENTY EIGHT DOLLARS and 40/100  
15           (\$4,628.40). Plaintiff is entitled to judgment in an amount of \$4,628.40 from the time the contract  
16           was constructively terminated until expiration of Plaintiff's contract, plus an equal amount as  
17           liquidated damages.  
18

19  
20           WHEREFORE, Plaintiff prays for judgment against the defendants, jointly and severally as  
21           follows:  
22

23           1. For an award of unpaid wages and overtime compensation accrued as of the filing of this  
24           complaint in the amount of TWENTY THOUSAND NINE NINETY THREE DOLLARS and 04/100  
25           (20,993.04);  
26  
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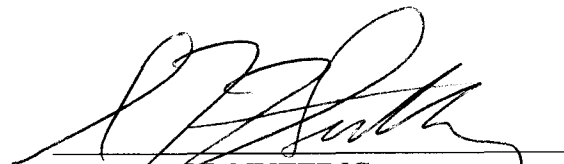
1           2.     For an award of wages and overtime compensation plaintiff would have earned for the  
2 remaining term of the contract, but for her constructive termination in the amount of FOUR  
3 THOUSAND SIX HUNDRED AND TWENTY EIGHT DOLLARS and 40/100 (\$4,628.40);  
4

5           3.     For judgment in an equal amount as liquidated damages.  
6

7           4.     For an award for all costs and attorneys fees pursuant to 29 U.S.C. §216(b);  
8

9           6.     For such other and further legal and equitable relief as the Court deems just and proper.  
10  
11

12           Dated this 11<sup>th</sup> day of April, 2007  
13

14  
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16                                   
17                                 STEPHEN J. NUTTING  
18                                 Attorney for Plaintiff  
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**VERIFICATION**

I, **GUIHUA BAI**, declare under penalty of perjury that I have read the foregoing verified complaint and that it is true and correct to the best of my recollection and knowledge and this declaration was executed on this 10 day of April, 2007, at Saipan, Commonwealth of the Northern Mariana Islands.

*Gui Hua Bai*

\_\_\_\_\_  
**GUIHUA BAI**  
Plaintiff

**CERTIFICATE OF TRANSLATION**

I, Qian M. Lieberman hereby certify that I am fluent in English and the Mandarin language and have translated the foregoing complaint from the English language into Mandarin and the Plaintiff has acknowledged that she has understood same.

*Qian M. Lieberman*

\_\_\_\_\_  
**QIAN M. LIEBERMAN**

## Massage Payment Schedule

Commission	Bonus
BELOW \$500	\$100
\$501-600	\$150
\$601-700	\$200
\$701-800	\$250
\$801-900	\$300
\$901-950	\$350
\$951-1000	\$400
\$1001-1100	\$500
\$1101-1200	\$600
\$1201-1300	\$700
\$1301-1500	\$800
Over\$1501	\$1000

No payment for fractional part of an hour.



## 指压保底工资标准(表一)

指压提成	保底工资数额
500美元以下	100美元
501-600美元	150美元
601-700美元	200美元
701-800美元	250美元
801-900美元	300美元
901-950美元	350美元
951-1000美元	400美元
1001-1100美元	500美元
1101-1200美元	600美元
1201-1300美元	700美元
1301-1500美元	800美元
1501美元以上	1000美元

注：只看整数，不看小数(即没有四舍五入法)

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